

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

May 20, 2009

Dean A. Campbell, Esquire
Law Offices of Dean A. Campbell, LLC
401 N. Bedford Street
P.O. Box 568
Georgetown, DE 19947

James P. Sharp, Esquire
Moore & Rutt, PA
122 W. Market Street
P.O. Box 554
Georgetown, DE 19947

RE: Pravinchandra K. Patel v. Theresa M. Murphy, et. al.
C.A. No. 08C-02-045 ESB
Memorandum Opinion

Date Submitted: February 2, 2009

Dear Counsel:

This is my decision on the motion for partial summary judgment filed by defendants Theresa M. Murphy and Frances M. Cardaci in this dispute over the accuracy of certain accounting records provided by the defendants to plaintiff Pravinchandra K. Patel in connection with the plaintiff's purchase of Seashore Tobacco Depot, Inc. from the defendants. Patel claims, in part, that Murphy committed accounting malpractice when she gave him an unaudited profit and loss statement that was allegedly inaccurate. I have granted the defendants' motion on this claim because there was no accountant-client relationship between Murphy and Patel.

STATEMENT OF THE CASE

Patel entered into a contract to purchase Seashore Tobacco Depot, Inc. from the defendants. The purchase agreement gave Patel 25 days to examine the accounting records of Seashore Tobacco Depot, Inc. Defendants gave Patel the accounting records, which included an unaudited 2004 Profit and Loss Statement prepared by Murphy, a certified public accountant. The 2004 Profit and Loss

Statement showed total sales of \$1,524,383.00. Patel also requested the 2004 corporate income tax return, but was told that it would not be available before the expiration of the due diligence period. Murphy wrote on the 2004 Profit and Loss statement that the “Corporate Tax Return will be completed by the March 15, 2005, deadline.” She then signed her name followed by her “CPA” designation.

After settlement, Patel found a spreadsheet for 2004 showing total sales of \$1,275,434.97, not the \$1,524,383.00 shown on the 2004 Profit and Loss Statement. Patel then filed a lawsuit in this Court, alleging claims of breach of contract, fraud and misrepresentation, and accounting malpractice. Patel alleges that Murphy, as a certified public accountant, had a duty to him to audit the 2004 Profit and Loss Statement to ensure that it was accurate and that she breached this duty. The defendants’ motion for partial summary judgment is limited to this claim.

STANDARD OF REVIEW

This Court will grant summary judgment only when no material issues of fact exist, and the moving party bears the burden of establishing the non-existence of material issues of fact.¹ Once the moving party meets its burden, the burden shifts to the non-moving party to establish the existence of material issues of fact.² The Court views the evidence in a light most favorable to the nonmoving party.³ Where the moving party produces an affidavit or other evidence sufficient under Superior Court Civil Rule 56 in support of its motion and the burden shifts, the non-moving party may not rest on its own pleadings, but must provide evidence showing a genuine issue of material fact for

¹ *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

² *Id.* at 681.

³ *Id.* at 680.

trial.⁴ If, after discovery, the non-moving party cannot make a sufficient showing of the existence of an essential element of the case, then summary judgment must be granted.⁵ If, however, material issues of fact exist or if the Court determines that it does not have sufficient facts to enable it to apply the law to the facts before it, then summary judgment is not appropriate.⁶

DISCUSSION

Patel alleges that Murphy committed accounting malpractice. The elements of an accounting malpractice claim are: 1) an accountant-client relationship giving rise to a duty, 2) the accountant breached the duty, and 3) the breach of that duty was the approximate cause of the claimed damages.⁷ A client is a “person or entity that employs a professional for advice or help in that professional’s line of work.”⁸ Patel alleges that he relied on the 2004 Profit and Loss Statement because it was prepared by Murphy, a certified public accountant. However, Patel admits the he did not employ Murphy as a certified public accountant to prepare the 2004 Profit and Loss statement for him.⁹ Patel also admits that Murphy could not perform an official audit of her own work,¹⁰ and that she had no

⁴ *Super. Ct. Civ. R. 56(e); Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

⁵ *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991), *cert. den.*, 112 S.Ct. 1946 (1992); *Celotex Corp.*, 477 U.S. 317 (1986).

⁶ *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

⁷ 2005 WL 3361219, at * 2 (Va. Cir. 2005).

⁸ Black’s Law Dictionary 247 (7th ed. 1999).

⁹ See Plaintiff’s Responses to Defendants’ Request for Admissions Directed to Plaintiff #8.

¹⁰ *Id.* at #9.

duty to audit the accounting records of Seashore Tobacco Depot, Inc.¹¹ Quite simply, Patel was not a client of Murphy's. Without the existence of an accountant-client relationship, Patel cannot establish that Murphy owed him a duty of care, thereby precluding his claim for accounting malpractice against her. Therefore, I have granted partial summary judgment in favor of the defendants on Patel's accounting malpractice claim against Murphy.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

¹¹ *Id.* at #10.